IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 30542 of 2007(J)

PETITIONER:

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1. **K.E.YESUDAS, AGED 40 YEARS,**
   S/O.K.A.ESTHO, KOCHEERIL HOUSE,
   MANJUMMAL NORTH P.O., UDYOGAMANDAL-ERNAKULAM.

2. **LAWRANCE, NADUVELI VEETTIL,**
   MANJUMMAL NORTH P.O., UDYOGAMANDAL,
   ERNAKULAM.

3. **ANTONY.V.P., VALASSERY HOUSE,**
   MANJUMMAL NORTH P.O., UDYOGAMANDAL.

4. **JAMAL, MELATH VEEDU,**
   UDYOGAMANDAL-ELOOR.

5. **ABDUL SALAM, VALIYA PARAMBIL VEEDU,**
   CHERANALLORE-ERNAKULAM.

6. **WILSON.V.P., VELASSERY HOUSE,**
   MANJUMMAL P.O., UDYOGAMANDAL-ERNAKULAM.

BY ADV. SRI.SIVAN MADATHIL

RESPONDENTS:

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1. **STATE OF KERALA REPRESENTED BY**
   THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **NATIONAL HIGHWAY AUTHORITY OF INDIA,**
   G%-6, SECTOR 10, DWARAKA-NEW DELHI-110 045.

3. **COCHIN PORT TRUST, PORT TRUST OFFICE,**
   W/ISLADN, KOCHI-3, REP.BY ITS CHAIRMAN.

4. SECRETARY, DEPARTMENT OF REVENUE(FAST TRACK PROJECTS), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

5. UNION OF INDIA, MINISTRY OF ENVIRONMENT AND FOREST, PARYAVARAN-GCO COMPLEX LODHI ROAD, 10 003 REP.BY ITS SECRETARY.

6. THE DISTRIC COLLECTOR, CIVIL LANES KAKKANAD, ERNAKULAM DISTRICT.

7. THE SPECIAL THAHASILDAR, LAND ACQUISION, VALLARPADOM INTERNATIONAL CONTAINER TRANSHIPMENT TERMINAL PROJECT COLLECTORATE BUILDING, KAKKANAD.

8. SUB DIVISIONAL MAGISTRATE/RDO, ERNAKULAM

R1,R4 &R6 TO R8	BY	SENIOR GOVT. PLEADER SRI.D.ANILKUMAR
R2	BY	SRI.THOMAS ANTONY
R3	BY	SRI.A.M.SHAFFIQUE SRI.E.K.NANDAKUMAR SRI.A.K.JAYASANKAR NAMBIAR SRI.ANIL D. NAIR
R5	BY	SRI.P.PARAMESWARAN NAIR,(ASST.SOLICITOR GENERAL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR,J

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W.P.(C) No. 30542 of 2007

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Dated this the 15th day of November, 2007

JUDGMENT

Petitioners are owners of plots or properties comprised in Eloor Village, Paravur Taluk of Ernakulam District. Some of the petitioners are agriculturists. The grievance of the petitioners is that their valuable land and homesteads are being taken away by 6th and 7th respondents, on behalf of the first respondent in an arbitrary and illegal method by invoking land acquisition proceedings. It is averred that the petitioners are neither given adequate compensation nor offered reasonable rehabilitation/resettlement, which has now become one of the important mandatory requirements for acquiring land for a public purpose. It is averred that State of Kerala have initiated steps to implement Vallarpadom International Container Transhipment Terminal Project with M/s. Dubai Ports International Ltd. U.A.E. For this purpose the Cochin Port Trust had entered into an agreement with Dubai Ports International Ltd. U.A.E. M/s. Dubai Ports International Ltd., is the developer

on a BOT basis. Government of India has given approval for the proposal for taking up common user project of National Highway connectivity, Rail connectivity and capital dredging by the concerned agencies with direction to approach the competent authorities for approval for implementation of this common user national project. It was also averred that Port trust approached National Highway Authority of India(NHAI). After conducting project studies, seven routs were identified, of which the route starting form NH 47 at Kalamassery, passing through Eloor, Cheranallore, Kothad, Moolampally and Bolgatty was found to be more feasible. It was also averred that the Ministry of Environment and Forest, after evaluating the project in detail had given clearance with specific conditions vide their communication dated 26.7.2006. Thereafter State of Kerala had issued notification for the acquisition of land for the aforesaid project. The petitioners and other affected persons raised objections to this. The petitioners are not against the implementation of the project, but their grievance is that their valuable land along with homestead are being taken

away by declaring award unilaterally. The respondents are offering meagre compensation without appropriate rehabilitation/resettlement. It is further averred that for acquiring land for public development project, Government has constituted respective District Level Purchase Committee (DLPC) as well as State Level Committee to look into the matter. It is also averred that a Complaints Grievance Committee is also constituted but the same is not functioning effectively. The 6th respondent District Collector is the Chairman of the DLPC. He had made a proposal and active recommendations before the State Government for adequate rehabilitation/resettlement for the affected persons and also as a part of compensation, employment offer for the persons who will loose their land. That proposal was approved by State Level Empowered Committee also. The petitioners had agreed to surrender their land voluntarily but subsequently it is found that they were cheated by the authorities. So they had withdrawn their consent. One of the affected persons approached Cochin Port Trust. Cochin Port Trust had informed him that he shall

approach National Highway Authority of India or State of Kerala. Government of India had granted formal approval of the project including it under the 'Special Economic Zone' (SEZ). It is averred that when land was required for Smart City Project instead of invoking the land acquisition proceedings State was pleased to arrange for suitable rehabilitation/resettlement package for the evictees providing alternate land and also providing adequate compensation. In this case the Grama panchayat also requested to the Government to provide suitable rehabilitation project. But the authorities concerned are taking steps to acquire the land of the petitioners after giving a meagre compensation and without providing rehabilitation/resettlement facility.

2. It is averred that Government of India have formulated a policy of National Development Displacement and Rehabilitation Policy which came into operation from 2004 onwards. Subsequently a revised rehabilitation policy was published in the year 2006. A Bill was also introduced in the Parliament and the same is pending. Rehabilitation package

was approved by the Cabinet after consulting the State and Union Territories and as such the State Government is also bound to follow the same. The main prayer is for a declaration that the award passed unilaterally without providing adequate compensation rehabilitation /resettlement package as null and void. Petitioners also prayed for a writ of mandamus or direction to respondents 1 to 6 to implement rehabilitation/resettlement to the petitioners as directed in Exts.P1, P2 and P3. Petitioners also seek a direction that the action of respondents acquiring land without giving reasonable compensation and without providing rehabilitation/resettlement package is violative the principles of natural justice under Article 14 of the Constitution of India.

3. On behalf of respondents 1 to 4, Additional Secretary to Government has filed a counter affidavit. It is averred that land acquisition proceedings have been initiated in seven villages of Ernakulam District for National Highway connectivity to the proposed Vallarpadam International Container Transhipment Terminal Project (ICTT). Lands comprised in seven

villages viz Mulavukadu, Kadamakkudy, Cheranallur,Varapuzha, Eloor, Thrikkakara North and Kodungallur included in the project. The National Highway connectivity Project is being executed by the National Highway Authority of India. The State Government as per order dated 4.2.2005 nominated the project for land acquisition under the Fast Track Project as per the guidelines issued in the order dated 5.11.2004.. Requisition for land for the National Highway connectivity was received from the Cochin Port Trust. Government have accorded sanction to invoke urgency provision of section 17(4) of the Land Acquisition Act to acquire the land. It is contended that the guidelines for accelerating land acquisition and principles and policy framework for rehabilitation and resettlement for the speedy implementation of Fast Track Project have been issued as per the guidelines. The land value will be determined by the District Level Purchase Committee (DLPC) of which the District Collector is the Chairman. The District Level Purchase Committee will arrive at the replacement value within the area after conducting due enquiries and after holding negotiations with the project

affected persons. The Empowered Committee will consider and approve the land value proposed by the District Level Purchase Committee after effecting modifications in the recommended price, if found necessary. It is averred that

> "in the instant case, the District Level Purchase Committee fixed the rate as twice the amount of the aggregate land value fixed as per BVR+30% solatium+12% additional market value of the land. In addition, it has also been decided to allow structural value of the buildings without deducting the depreciation. This has been done taking into consideration the fact that maximum compensation is given to the persons dislocated and as a gesture from the part of Government to help them liberally. "

4. It is contended that majority of the land owners coming under the acquisition have already filed consent letters under District Level Purchase Committee rate and executed document with National Highway Authority of India and handed over their land for the road project. The land value announced by the District Level Purchase Committee and approved by the Empowered Committee is much above the Land Acquisition Price. If the land owners have not opted for the District Level Purchase Committee rate, awards are passed under section 11 of the Land Acquisition Act and the land owners are entitled to

claim benefit of section 18 of the Act to refer that matter for enhanced compensation. It is contended that petitioners 1 to 3 had initially given consent to District Level Purchase Committee accepting the District Level Purchase Committee rate, but subsequently withdrew the same. The averment that no rehabilitation package is given to the persons affected by the acquisition of the property for road connectivity for International Container Transhipment Terminal Project (ICTT) is denied. It is also averred that rehabilitation package does not mean giving of alternate site. In the present case the Government have offered a rehabilitation package as detailed in para 5 of the counter. It is also contended that there is no comparison between the method adopted for acquisition of land for smart city project with this case. It is further contended that the road connectivity project is executed by the National Highway Authority of India. The alignment is so designed that it may need only the minimum land. It is further contended that of 603 land owners coming under the acquisition 490 persons had filed consent under the DLPC scheme. The State

Government is well aware and sympathetic towards the problems of the people who are facing displacement due to the acquisition of land for such projects. Government is committed to sort out the issues pertaining to such displacement and the commitment of the Government is evident from the fact that instead of going into land acquisition proceedings under Land Acquisition Act, it is giving a fixed land value which is more beneficial for the land owners.

5. The Chief Engineer of the Cochin Port Trust filed a counter affidavit contending that Cochin Port Trust had entered into an agreement with M/s.Dubai Ports International, UAE(DPI) for construction of project on BOT basis. Government of India has given approval for the proposal of taking up the common user projects of National Highway Connectivity, rail connectivity and capital dredging. The Port Trust had taken up the requirement of National Highway Connectivity with National Highway Authority of India. A detailed Project Report is by M/s. Intercontinental Consultants and Technocrats Pvt. Ltd (ICT) in December 2001. The works of the Container Terminal

commenced on a time frame basis and one of the most essential requirements is the National Highway Connectivity. The acquisition of land for the purpose of constructing National Highway for the Vallarpadam Project is undertaken by the State Government and necessary notification under the Land Acquisition Act was published. The District Collector Ernakulam had notified a scheme known as DLPC Scheme. As per the scheme all land owners are entitled to get twice the amount of the aggregate amount of land value plus 30% solatium and additional market value. The DLPC scheme is understood to be one of the rehabilitation packages provided by Government of Kerala and State has no other rehabilitation project. It is further contended that the rehabilitation package depends upon the situation in a particular locality wherein the acquisition took place.

6. The Project Director of National Highway Authority of India filed a counter affidavit contending that the Cochin Port Trust had requested to the National Highway Authority of India to construct the connectivity of Vallarpadam Container Terminal.

NAHI had appointed detailed Project Report Consultants in the year 2000 and a detailed Project Report was finalised in the year 2001. After identifying the area Cochin Port Trust requested the District Authorities for acquiring necessary land. It is contended that all the project affected people are compensated and rehabilitated as per the R&R plan approved by the State Government. The ICTT connectivity project is to provide a four lane road having a right of way of 45 meters starting from Kalamassery and ending at Vallarpadam. It is contended that in all these cases notification under Section 4(1) read with Section 17(4) of the Land Acquisition Act was duly published and awards were also passed. It is contended that if the grievance of the petitioners is that the land value awarded are not adequate they can proceed under Section 18 for determination of the land value, structural value etc. The petitioners have approached this Court without filing any objection under Section 18 of the Act. It is further contended that the National Highway Authority has not given any rehabilitation package to the land owners and had made it clear that only compensation can be given.

7. The 6th respondent, District Collector filed a detailed counter affidavit contending that in connection with the problem of rail connectivity a meeting was held in the Chamber of Minister for Revenue. In Cheranallur village an area 4.77 acres of Government land is available and hence the request for providing alternate site was accepted in that case. It was further averred that in Eloor puramboke land available is only 8.200 cents which is not sufficient to accommodate the need of all affected persons.

8. The petitioners have filed reply affidavits reiterating the contentions raised by them in the writ petition. In the reply to the counter filed by the 6th respondent it is stated that more than sufficient extent of alternate lands are available in Eloor Village and the District Collector has suppressed material facts.

9. The learned counsel for the petitioner has mainly raised four grounds. It is argued that Petitioner's lands are acquired for a development project and the petitioners are rendered homeless. It is averred that the authority for acquisition has a duty to see that they are provided with

alternate sites in a nearby location so as to enable them to carry on their avocation and their children to continue education. It is argued that rehabilitation/resettlement package is also to be provided. The learned counsel pointed out the examples of Narmada Dam construction and argued that, that is the reason why the Central Government had issued Ext.P14 guidelines, which is now pending as Bill in the Parliament. The learned senior Government pleader appearing for the Government reiterated the stand of the Government that rehabilitation does not mean providing alternate accommodation. It is argued that there cannot be a uniform policy for the entire India and it depends upon the availability of land, density of population, nature of the land acquired etc. It is argued that in State of Kerala where the availability of the land is scarce it is virtually impossible for the State to offer alternate site in all cases. It is also argued that if it is accepted that in all cases affected parties are to be given alternate site the Government will be compelled to acquire the land belonging to another person which in turn can raise the same problem. It is submitted that in a State like

Kerala it is impossible to implement the guidelines prescribed under Ext.P14. It is argued that the contention of the petitioners that in this case there is absolutely no rehabilitation package is not correct. Respondents 1 to 4 had offered specific rehabilitation package. It is submitted that the respondents are offering land value plus 30% solatium plus 12% multiplied by 2 as rehabilitation package. This amount is much more than what is payable in award under the Land Acquisition Act.

10. The main contention of the petitioners is that when a person sought to be displaced for a developmental project the person affected must be given equal land for his resettlement. The State of Kerala is a small State but is very densely populated. This Court cannot close its eyes to the fact that in a densely populated State like Kerala it is very difficult to get agricultural land. In cities like Thiruvananthapuram, Ernakulam etc. it is virtually impossible to find alternate land for allotment to the evictees. It is argued that alternate land is available in Eloor. The 6th respondent who is none other than District Collector of Ernakulam has filed an affidavit stating that in Eloor

village the Government land available for distribution is less than ten cents. Of course, the petitioners produced document to show that the total extent of Government land in Eloor Village is more than 440 acres. Ext.P1 only shows that as per records in Eloor Village more than 440 acres of land belong to the Government. But that does not mean that those lands are unoccupied and are readily available for distribution. The learned Government Pleader submits that it includes all public places such as roads in that area. In the affidavit filed by the District Collector he had given actual extent of land available for distribution. I do not find any reason to disbelieve the affidavit filed by a responsible officer like District Collector. It is also to be noted that there is no allegation of malafidies against any of the respondents. The facts and circumstances discussed above shows that no alternate land is available for distribution. So merely because persons living at Cheranalloor Village who were displaced for rail connectivity were offered alternate sites it is not possible to hold in this case also that the State has a duty to provide alternate site to the persons affected.

11. It is argued by the learned counsel for the petitioners that the persons evicted for Smart City Project were given alternate sites and atleast one member of the affected family will be provided with employment in the Project in accordance with their qualifications. It is argued that since sufficient Government land was not available the State purchased land owned by Companies to allot to the evictees. It is argued that alternate sites offered to the persons evicted for Smart City Project are situated 5k.m away from this project and a comparison of the resettlement and rehabilitation package offered in that case with that of this case clearly shows that there is discrimination and hence this is violation of Article 14 of Indian Constitution. In answer to that contention, learned counsel for respondents have argued that the smart city project is a profit making project and that is a joint venture entered into between State Government and a Private Company in Dubai 16% of the share capital is made by the State Government and 84% made by the Dubai Company and it is meant for commercial purposes which may or may not yield profit. It is argued that

ICTT is a sovereign function without any profit motive and even if the project turned to be a total failure, it will have to be implemented. it is submitted that Kochi was selected for Smart City Project because of its nearness to the International Cable Route. It is argued that International Cable which start from North America, circumvents African Countries and reaches Kochi from here proceeds to Singapore and from there to far east. It is argued that in view of the existence of international cable route Project cost is cheapest and that is the main reason why Kochi was selected for Smart City Project. It is argued that each project is a class of its own and no comparison of two projects is possible. The facts and figures pointed out by the respondents shows that these two projects cannot be compared with each other. This Court cannot compare two unequals and then hold that there is discrimination. So merely because the persons displaced for Smart City Projects were offered more attractive rehabilitation or resettlement package, it cannot be held that there is violation of Article 14 of Constitution of India.

12. It is argued by the learned counsel for the petitioners

that it has the problems faced by Project Affected Persons have become a social issue. It is argued that while implementing major projects a lot of persons are rendered homeless. It is argued that the Government is bound to see that the development as well as rehabilitation go together. It is submitted that on account of the problem faced by the person affected on account of implementation of projects the Central Government have adopted Ext.P14 policy in January 2004. Subsequently Union Government discussed the matter with all the State Governments, Union territories and various other organisations and introduced another policy by which it is made mandatory that a Project affected persons should be given almost equal land with all similar facilities very near to the place of acquisition. It is also pointed out that in fact Bill was introduced in the Parliament and the same is pending. It is pointed out that as and when the Bill is passed that will become a central legislation which is applicable to all States as well as Union Territories. The learned Government Pleader pointed out that it is not possible to implement many of the clauses in

Ext.P14 rehabilitation policy relied on by the petitioners in States like Kerala. It is argued that it enjoins that person who is proposed to be affected must be given alternate land well in advance to the acquisition for resettlement. It is further argued that in a Federal form of Government the State Government has every right to develop its own rehabilitation policy. It is pointed out that the State Government is having its rehabilitation policy but it varies from project to project. It is argued that resettlement does not mean offering alternate site alone. There is much force in the argument of Government Pleader that resettlement and rehabilitation etc. depends upon various facts. Availability of alternate land is an important factor and in this case alternate land is not available. So in this case the Government is not in a position to offer alternate land. It is not possible to issue a direction that whenever a person is evicted from his land he must be given alternate land. It is also not possible to hold that resettlement/repackage offered in this case is not adequate.

13. It is argued by the counsel for the petitioners that the

Cochin Port Trust is an instrumentality of the Central Government and the Central Government had accorded permission to implement the project on a definite understanding that the State will follow rehabilitation and resettlement planning. Much reliance is placed on Ext.P1. Ext.P1 is environmental clearance for development of road connectivity to Cochin Port Trust by National Highway Authority of India. Clause xvii reads as follows:

> "(xvii) It should be ensured that all the Project Affected People are compensated and rehabilitated as per the R&R plan approved by the State Government of Kerala."

14. In clause xix it is also stated that acquisition of area for the projects should be undertaken as per Kerala Government Land Acquisition Act and compensation should be paid as per the said Act. There is no direction in Ext.P1 to the effect that State shall follow the guidelines prescribed in Exts.P14 and P17. On the other hand State is given a free hand to formulate its own rehabilitation/resettlement package.

15. The learned counsel for the petitioners prayed that a direction may be issued to the Government National Highway

Authority and Cochin Port Trust to follow the resettlement package policy as contained in Exts.P14 and P17. This Court cannot direct the Government to adopt a particular policy. If the Government announces a uniform policy and thereafter refuses to follow the same without any valid reason a direction can be issued to follow the policy. But no direction can be issued to the State to formulate a policy in any particular manner. That is for the State to decide and implement. Ext.P1 merely states that National Highway Authority shall ensure all the project affected people should be compensated and rehabilitated as per R&R plan approved by the State of Kerala. It is open to the petitioner either to accept it or reject package offered. This Court cannot direct the Government to formulate the rehabilitation project as required by the petitioners.

16. The learned counsel for the petitioners has argued that the Government has issued a direction to treat the entire project as a Special Economic Zone. But in this case the only question arising for consideration is payment of compensation for the land acquired for the National Highway Connectivity

which starts from NH47 and ends in Vallarpadam. Ext,P8 is the notification forming Special Economic Zone. The present acquisition will not come within the purview of SEZ also.

17. The learned counsel for the petitioners has argued that the petitioners are not asking the Government to formulate any particular policy but their demand is very limited that the Government shall follow the policy formulated by the Central Government. It is argued that in the absence of any policy similar to Ext.P14 and P17 the State is bound to follow the guidelines contained in Exts.P14 and P17. According to me issuing such a direction will amounts to direct the State as to how it should discharge sovereign function. So it is not possible to issue such a direction.

18. It is true that the issue projected in this case involves human problem. But it is for the Government to consider and pass appropriate orders and this Court cannot issue any direction as to how the problem shall be tackled . The stand taken by the respondents is that all aspects were considered and thereafter the package was offered which according to the

respondents is most beneficial to the owners of the land. This Court cannot consider whether a better policy is possible or not. So this Court cannot grant any relief to the petitioners as prayed for in this writ petition. So the writ petition is only to be dismissed.

In the result the writ petition is dismissed.

K.PADMANABHAN NAIR, JUDGE

dvs